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Real Property

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REAL PROPERTY

Deeds

The grantor handed to his son a deed which preserved a life estate in the grantor with a vested remainder in fee simple to the son. The son then handed the deed back to the grantor, his father, for safekeeping. During the grantor's life he conveyed away small portions of the tract in fee simple and an easement for highway purposes with the apparent knowledge and consent of the remainderman, who did not join in these conveyances. The court of appeals¹ reversed the probate court and held that there had been a legal delivery of a valid deed to the son during the life of the grantor. The possession of the deed and tract by the grantor was consistent with his life estate. The subsequent conveyances of small portions of a large tract are insufficient to show a revocation of the delivery. Quaere— is there not now a cloud on the title of the subsequent grantees?

Recording

In *Bach v. Ohio Fuel Gas Co.*,² the Ohio Supreme Court held that a grant of oil and gas rights in warranty deed form is properly recorded with leases. The court observed that the document was not a lease since it was a grant in perpetuity, in deed form, and contained no reservation for rent. But Ohio law does not recognize an estate in oil and gas in the realty, but merely the right of the estate holder to extract them.³ The conveyance therefore constituted a license and was therefore properly recorded under the lease section.⁴

Dedication

A good review of the principles of dedication is contained in the common pleas opinion of *Carter v. Swan*.⁵ The court held that a deed of a one acre tract "for the public use" establishes that the general public is the intended dedicatee. An offer of dedication may be accepted by the general public and thereupon be binding even though not accepted by a body politic.⁶ The evidence did not establish an abandonment by the public of its rights by non user.

The court of appeals⁷ held that the legislative powers granted the di-

¹ *In re McKitterick's Estate*, 94 Ohio App. 373, 115 N.E.2d 163 (1953)

² 160 Ohio St. 81, 113 N.E.2d 865 (1953)

³ *Kelley v. Ohio Oil Co.*, 57 Ohio St. 317, 49 N.E. 399 (1897); 24 AM. JUR. 520.

⁴ OHIO REV. CODE § 5301.09 (OHIO GEN. CODE § 8518)

⁵ 114 N.E.2d 107 (Summit Com. Pl. 1953)

⁶ *Scott v. Snyder*, 73 Ohio App. 424, 54 N.E.2d 157 (1943)

⁷ *Kubin v. Reineck*, 93 Ohio App. 320, 113 N.E.2d 914 (1952)

rector of highways authorize him to cut fruit and shade trees to provide facility and travel and efficient enjoyment of the highway system.⁸ This duty can be delegated by the director to a third party. Such third party will not then be liable in trespass. In the present case this authority was applied to the land contiguous with the paved roadway, but within the highway dedication.

Water Rights

In *Ratcliffe v. Indian Hill Acres*,⁹ the court of appeals held that the mere fact that water may be rendered unfit for many uses for which it had been suitable before is not a basis for a damage action. There is no liability in damages when a riparian owner uses the stream in a reasonable manner consistent with the common right.¹⁰ The opinion also noted that the deposits of mud and weed seed on the plaintiffs' land complained of were the result of a stopping or slowing up of the natural flow of the stream by the plaintiffs to create an artificial pond. The plaintiffs cannot complain of damages resulting from their own act.

In *Conobre v. Fritsch*,¹¹ the court of appeals held that the overflow of a spring running in a definite channel encased in tile pipe is a natural watercourse. The adjoining landowners therefore have only riparian and not exclusive rights. The court noted that the purpose of the tile was to cover an otherwise open watercourse as an aid in cultivation. The defendant was enjoined from diverting the water to his exclusive use although the spring was on his land.

Torrens Act

In *Bepler v. Reardon*,¹² the defendant surrendered a certificate of title and demanded that it be deregistered.¹³ The recorder obtained an order from the court of common pleas not to accept this surrender.¹⁴ From an appeal of this order, the court of appeals held that the code provisions for deregistration were intended only to give the holder of title by virtue of proceedings instituted to register and partition and certain other specified proceedings¹⁵ the option of deciding whether he desires a registered or unregistered title to land already registered. Otherwise the special provision for deregistration would be in conflict with Ohio Revised Code Section 5309.90 (Ohio General Code Section 8572-86).

⁸ OHIO REV. CODE § 5501.11 (OHIO GEN. CODE § 1178-2).

⁹ 93 Ohio App. 231, 113 N.E.2d 30 (1952).

¹⁰ 56 AM. JUR. 833.

¹¹ 92 Ohio App. 520, 111 N.E.2d 38 (1952).

¹² 92 Ohio App. 70, 109 N.E.2d 686 (1952).

¹³ OHIO REV. CODE § 5309.68 (OHIO GEN. CODE § 8572-64a)

¹⁴ OHIO REV. CODE § 5309.43 (OHIO GEN. CODE § 8572-40)

¹⁵ OHIO REV. CODE § 5309.66 (OHIO GEN. CODE § 8572-64).